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WASHINGTON DC. 20554

IN REFERENCE TO NSD FILE NOO.L-00-161
CCC DOCKET 96-98

I WISH YOU WOULD RECONSIDER CHANGING
ARCADE, NEW YORK'S 492 EXCHANGE. I WOULD LIKE
TO REMAIN IN AREA CODE 716. A CHANGE
WOULD COST US A LOT FOR STATIONERY & OUR
CUSTOMERS WOULD BE LOST, IF WE HAVE A
NEW AREA CODE.

Norman Zimmer

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

The State of New York Department of Public Service)	
Request for the Release of a New Area Code to Provide)	NSD File No. L-00-161
Relief for the 716 Numbering Plan Area)	CC Docket <u>96-98</u>

**INITIAL COMMENTS OF THE STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE**

The State of New York Department of Public Service (NYDPS) respectfully responds to the Common Carrier Bureau's Public Notice, released August 9, 2000, DA 00-1806. These comments address the following issues: (1) the issue of splitting rate centers generally; (2) the assertion in the NYDPS letter of June 20, 2000 that our decision reflects viewpoints not represented in the industry guidelines development process; and (3) the interrelationship between the area code relief authority delegated to state commissions and the industry area code relief guidelines.

As discussed below, NYDPS, like the Federal Communications Commission, is concerned about number conservation and has aggressively instituted policies to more efficiently preserve these valuable resources. The FCC should support implementation of the New York decision, which carefully weighed the competing interests of the industry and the public.

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I. Rate Center Splitting Should Be Decided on a Case-By-Case Basis

New York has been a consistent advocate for increasing the efficiency of number usage in the state and has sought to avoid or curtail practices inconsistent with that goal to the full limits of its jurisdictional authority. Indeed, New York sought and obtained additional delegated authority from the Commission to expand its number conservation efforts. Pursuant to that delegated authority, the New York Public Service Commission (NYPSC)¹ has now implemented a phased-in schedule of thousands-block number pooling throughout the state, number reclamation procedures, and the establishment of a utilization threshold for assignment of growth NXX codes.

It is against this background that the split of 14 rate centers at issue in the 716 NPA was adopted. The NYPSC noted that the number of rate centers split was modest. When compared with the 10-fold increase in available numbers that will result from thousands-block pooling already in place in the 716 NPA, the accelerated assignment of no more than 29 NXX codes as a result of the split affects a very small proportion of the available codes. This minimal impact, in the view of the NYPSC, was justified because the decision established an easily identified political boundary for the new area code.

Various industry segments have advanced the view before the Commission that rate center splitting may lead to number assignment inefficiencies. These arguments overstate the significance of the practice in a given circumstance, such as in the 716 NPA. A flexible approach to the guideline against splitting rate centers would further the overall goal of number

¹ The NYDPS serves as the staff of the NYPSC.

conservation. Where that goal is otherwise being met, other considerations, such as the strong political identity inherent in a county as a single entity, should be accommodated.

II. The New York Public Service Commission Properly Balanced the Interests of Consumers and the Industry

NYPSC Opinion No. 00-06, which directed that the 716 NPA be split geographically along county lines, reflects the viewpoints of a different constituency than that which developed the Industry Numbering Committee's guidelines. The NYPSC considered comments from incumbent, competitive and wireless carriers; town, city, and county governments; a regional development board; a chamber of commerce; and the New York State Consumer Protection Board, who participated formally. Other civic and quasi-governmental organizations, associations, local businesses, and individuals attended public statement hearings held in each of 11 counties, wrote letters, sent e-mails to the Department's website or called a special opinion phone line to express their views. In all, NYDPS staff reviewed 21 formal submissions, 72 public statements, approximately 70 letters (including a petition with over 1,000 signatures), 1,133 telephone calls, and 724 e-mails from the public.

In contrast, the Industry Numbering Committee (INC) is limited to representatives of the telecommunications industry. The particular INC guideline to prohibit splitting rate centers in an NPA split was developed and proposed by five telecommunications carriers at an INC workshop meeting in 1999,² voted upon by approximately 30 telecommunications carriers at that workshop, and later ratified by a similar group. The industry proponents of the guideline cited the increased effort, time and expense required for telephone companies implementing a

² See INC Workshop Contribution #NPA-122, Issue #193, July 12, 1999

change where a rate center is split, particularly the increase in the tasks that must be performed by hand. Thus the primary focus of the industry in adopting the guideline was on implementation convenience, not number efficiency.

The diversity of viewpoints represented in the NYDPS process necessarily resulted in a wide range of opinions and arguments presented to the Public Service Commission. The New York PSC exercised its judgment in balancing interests of utilities, consumers of various types, governmental agencies, competitive telecommunications carriers and others in reaching its decision. This judgment should serve to assure the Commission that the full range of interests have been considered.

III. The INC Guidelines Cannot Bind the Commission

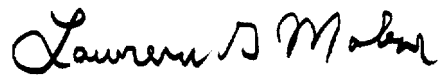
Even if the Commission could delegate the task of drawing the boundaries of new area codes to the industry under the Telecommunications Act of 1996, it cannot do so without prior notice and the full regulatory procedure necessary to implement such delegation. Gas Appliance Mfrs Ass'n v. Sec. of Energy, 722 F.Supp. 792 (D.D.C. 1989). Indeed, the Commission has taken the opposite tack, delegating that authority instead to the state commissions, because they are uniquely positioned to take into account the full diversity of factors impacting a particular area code relief plan. Here, while the industry's cooperation and willingness to lend its technical expertise is invaluable, it cannot supplant the decision the Commission expressly delegated to the state commissions.

Initial Comments of NYSDPS
NSD File No. L-00-161
CC Docket No. 96-98
September 1, 2000

IV. Conclusion

In light of the foregoing, the NYDPS respectfully requests the Commission to direct NANPA to release a new NPA code for western New York, consistent with Opinion 00-06, forthwith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence G. Malone". The signature is fluid and cursive, with the first name "Lawrence" being more prominent.

Lawrence G. Malone
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Dated: September 1, 2000
Albany, New York